

EXHIBIT COVERSHEET

Exhibiting No. - 92024102

Exhibition date -

Exhibit Title -

Motion pursuant to the Government in the
Sunshine Act for (A) an order requiring petitioners
to show cause why their claims should not be
dismissed due to improper Ex parte contact
concerning an adjudicatory procedure

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X		
GALLEON S.A.,	:	
BACARDI-MARTINI U.S.A., INC. and	:	
BACARDI & COMPANY LIMITED,	:	Cancellation No. 24,108
	:	
Petitioners,	:	
	:	
- against -	:	
	:	
HAVANA CLUB HOLDINGS, S.A. and	:	
HAVANA RUM & LIQUORS, S.A.	:	
d.b.a. H.R.L., S.A.,	:	
	:	
Respondents	:	
-----X		

DECLARATION OF GREGG REED

GREGG REED, an attorney duly admitted to practice before the Courts of the State of New York, declares under penalty of perjury:

1. I am associated with Proskauer Rose LLP, counsel for respondents in the above-captioned cancellation proceeding. I submit this affirmation in support of Respondents' Motion Pursuant To The Government In The Sunshine Act For An Order Requiring Petitioners To Show Cause Why Their Claims Should Not Be Dismissed Due To Improper Ex Parte Contacts, and for other and related relief. I have personal knowledge of the matters set forth below.

2. The web site of the Florida Department of State Division of Elections, <http://election.dos.state.fl.us>, includes a campaign finance database containing detailed financial records that campaigns and committees are required by law to disclose. Attached hereto as Exhibit A are true and correct copies of printouts from that database reflecting contributions made by petitioner Bacardi-Martini U.S.A., Inc. to the Florida Republican Party between June 2,

1998 and May 29, 2002. Also attached in that exhibit are true and correct copies of printouts from that database reflecting contributions made to Governor Bush's election campaign by top executives of petitioner Bacardi-Martini U.S.A., Inc. and their spouses between December 2001 and March 2002.

3. Attached hereto as Exhibit B is a true and correct copy of a Freedom of Information Act Request (the "FOIA Request") which I filed with the United States Patent and Trademark Office ("PTO") on July 2, 2002.

4. Attached hereto as Exhibit C is a true and correct copy of a communication I received from the PTO dated August 1, 2002, which attaches copies of documents the PTO found to be responsive to the FOIA Request.

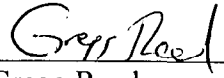
5. Attached hereto as Exhibit D is a true and correct copy of a supplemental communication I received from the PTO dated August 13, 2002, which attaches copies of additional documents the PTO found to be responsive to the FOIA Request.

6. Attached hereto as Exhibit E is a true and correct copy of a Public Records Act Request which I caused to be filed with the Florida Governor's Office on July 15, 2002.

7. Attached hereto as Exhibit F is a true and correct copy of a communication I received from the Florida Governor's Office dated August 28, 2002, which attaches copies of documents the Florida Governor's Office found to be responsive to the above-mentioned Public Records Act Request. I have been informed that this was a preliminary production, and that the Florida Governor's Office is continuing to search for additional responsive documents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2002.


Gregg Reed

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on September 10, 2002, a true and correct copy of the foregoing

DECLARATION OF GREGG REED, with exhibits

was served by hand on:

William R. Golden, Jr.
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
Attorneys for Petitioners

Gregg Reed
Gregg Reed

EXHIBIT A



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public. has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base.

Search Criteria:

Detail of Candidates/Committees
Election Year: 2002 General Election
With Payee Last Name Starts With: Bacardi-Martini

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Republican Party of Florida (PTY)	05/29/2002	50,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	ATTN: MR. JORGE RODRIGUEZ
Republican Party of Florida (PTY)	06/18/2001	25,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	ATTN: MR. JORGE RODRIGUEZ
Republican Party of Florida (PTY)	08/21/2001	2,500.00	CHE	BACARDI-MARTINI U.S.A. INC.	ATTN: MR. JORGE RODRIGUEZ
Republican Party of Florida (PTY)	02/27/2002	10,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	ATTN: MR. JORGE RODRIGUEZ
Total:		87,500.00			

4 Contribution(s) Selected

Query the Campaign Finance Data Base

Department of State [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public, has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base.

Search Criteria:

Detail of Candidates/Committees
Election Year: 2000 General Election
With Payee Last Name Starts With: Bacardi Martini

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Republican Party of Florida (PTY)	09/21/2000	10,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BOULEVARD
Republican Party of Florida (PTY)	11/02/1999	50,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BOULEVARD
Republican Party of Florida (PTY)	08/31/2000	15,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BOULEVARD
Republican Party of Florida (PTY)	06/14/2000	2,500.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BOULEVARD
Republican Party of Florida (PTY)	06/20/2000	5,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BOULEVARD
Florida Democratic Party (PTY)	12/15/1999	5,000.00	CHE	BACARDI-MARTINI USA, INC.	2100 BISCAYNE BOULEVARD
Total:		87,500.00			

6 Contribution(s) Selected

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]



Florida Department of State Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public, has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base.

Search Criteria:

Detail of Candidates/Committees
Election Year: 1998 General Election
With Payee Last Name Starts With: Bacardi-Martini

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Republican Party of Florida (PTY)	06/02/1998	10,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BLVD.
Republican Party of Florida (PTY)	06/30/1998	15,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BLVD.
Republican Party of Florida (PTY)	10/30/1998	15,000.00	CHE	BACARDI-MARTINI U.S.A. INC.	2100 BISCAYNE BLVD.
Republican Party of Florida (PTY)	06/30/1997	500.00	CHE	BACARDI-MARTINI USA, INC.	2100 BISCAYNE BLVD.
MacKay, Buddy (DEM) (GOV)	09/18/1998	5,000.00	CHE	BACARDI-MARTINI, INCORPORATED	2100 BISCAYNE BOULEVARD
Florida Democratic Party (PTY)	12/21/1997	500.00	CHE	BACARDI-MARTINI, INCORPORATED	066 PONCE DE LEON BLVD.
MacKay, Buddy (DEM) (GOV)					
Total:		46,000.00			

6 Contribution(s) Selected

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public, has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base.

Search Criteria:

Detail of Candidates
Election Year: 2002 General Election
Office: All
Party: All
With Candidate Last Name Starts With: Bush
With Payee Last Name Starts With: sardina
Sort Contributions By: Contributor Name
And Then Sort By: Candidate/Committee Name
Limit Number Of Records Returned To: 500

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Bush, Jeb (REP) (GOV)	12/14/2001	500.00	CHK	SARDINA EDUARDO M.	4995 SW 78 STREET
Bush, Jeb (REP) (GOV)	12/14/2001	500.00	CHK	SARDINA EDUARDO M.	4995 SW 78 STREET
Total:		1,000.00			

2 Contribution(s) Selected

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public, has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base

Search Criteria:

Detail of Candidates
Election Year: 2002 General Election
Office: All
Party: All
With Candidate Last Name Starts With: Bush
With Payee Last Name Starts With: ruz
Sort Contributions By: Contributor Name
And Then Sort By: Candidate/Committee Name
Limit Number Of Records Returned To: 500

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Bush, Jeb (RBP) (GOV)	12/12/2001	500.00	CHR	RUTZ, RODOLFO RUI	1315 MENDAVIA AVENUE
1 Contribution(s) Selected	Total:	500.00			

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

*This information is being provided as a convenience to the public, has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base*

Search Criteria:

Detail of Candidates
Election Year: 2002 General Election
Office: All
Party: All
With Candidate Last Name Starts With: Bush
With Payee Last Name Starts With: Ruiz
Sort Contributions By: Contributor Name
And Then Sort By: Candidate/Committee Name
Limit Number Of Records Returned To: 500

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Bush, Jeb (REP) (GOV)	12/12/2001	500.00	CHE	RUIZ CARMEN RUI	1315 MENDOZA AVENUE
Total:		500.00			

1 Contribution(s) Selected

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public. has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base.

Search Criteria:

Detail of Candidates
Election Year: 2002 General Election
Office: All
Party: All
With Candidate Last Name Starts With: Bush
With Payee Last Name Starts With: rodriguez
Sort Contributions By: Contributor Name
And Then Sort By: Candidate/Committee Name
Limit Number Of Records Returned To: 500

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Bush, Jeb (RBP) (GOV)	02/28/2002	500.00	CHE	RODRIGUEZ JORGE H.	455 EAST DILLON DRIVE
Total:		500.00			

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public. has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base.

Search Criteria:

Detail of Candidates
Election Year: 2002 General Election
Office: All
Party: All
With Candidate Last Name Starts With: Bush
With Payee Last Name Starts With: rodriguez
Sort Contributions By: Contributor Name
And Then Sort By: Candidate/Committee Name
Limit Number Of Records Returned To: 500

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Bush, Jeb (REP) (GOV)	02/28/2002	500.00	CHE	RODRIGUEZ MARLENA H.	455 EAST DILDO DRIVE
Total:		500.00			

1 Contribution(s) Selected

Query the Campaign Finance Data Base

[Department of State] [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public, has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base.

Search Criteria:

Detail of Candidates
Election Year: 2002 General Election
Office: All
Party: All
With Candidate Last Name Starts With: Bush
With Payee Last Name Starts With: marmol
Sort Contributions By: Contributor Name
And Then Sort By: Candidate/Committee Name
Limit Number Of Records Returned To: 500

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Bush, Jeb (RBP) (GOV)	03/15/2002	500.00	CHE	MARHOL, RAUL MAR	1541 BRICKELL AVENUE
Total:		500.00			

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]



Florida Department of State
Division of Elections

Contributions Query Results

This information is being provided as a convenience to the public. has been processed by the Division of Elections and should be cross referenced with the original report on file with the Division of Elections in case of questions.
About the Campaign Finance Data Base

Search Criteria:

Detail of Candidates
Election Year: 2002 General Election
Office: All
Party: All
With Candidate Last Name Starts With: Bush
With Payee Last Name Starts With: marmol
Sort Contributions By: Contributor Name
And Then Sort By: Candidate/Committee Name
Limit Number Of Records Returned To: 500

Candidate/Committee	Date	Amount	Typ	Contributor Name	Address
Bueth, Jeb (REP) (GOV)	03/15/2002	500.00	CHK	MARMOL ANA	1541 BRICKELL AVENUE
Total:		500.00			

1 Contribution(s) Selected

Query the Campaign Finance Data Base
[Department of State] [Division of Elections] [Elections Online]

EXHIBIT B

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
Telephone 212.969.3000
Fax 212.969.2900

LOS ANGELES
WASHINGTON
BOCA RATON
NEWARK
PARIS

Gregg Reed
Attorney at Law

Direct Dial 212.969.3938
greed@proskauer.com

July 2, 2002

BY CERTIFIED MAIL No. 7000 1670 0000 7251 3070

USPTO FOIA Officer
Box 8
United States Patent and Trademark Office
Washington, D.C. 20231

BY E-MAIL (Efoia@uspto.gov)

Re: Freedom of Information Act Request

To Whom It May Concern:

In accordance with the Freedom of Information Act (FOIA), 5 U.S.C. 552 (2002), I hereby request the following documents:

All correspondence concerning any request to cancel U.S. trademark registration No. 1,031,651 (for the mark HAVANA CLUB & Design) which was sent or received by (a) Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, James E. Rogan, (b) Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, Jon W. Dudas, (c) Commissioner for Trademarks, Anne Chasser, and/or (d) any member of the Trademark Trial and Appeal Board.

Thank you.

Sincerely,



Gregg Reed

EXHIBIT C



UNITED STATES
PATENT AND
TRADEMARK OFFICE

General Counsel
Washington, DC 20231
www.uspto.gov

AUG - 1 2002

Gregg Reed
Poskauer Rose LLP
1585 Broadway,
Suite 1864
New York, NY 10036

Re: Freedom of Information Act (FOIA) Request No. 02-245

Dear Mr. Reed:

The Office of the General Counsel has received your e-mail dated July 3, 2002, in which you requested, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, a copy of: "All correspondence concerning any request to cancel U.S. trademark registration no. 1,031,651 (for the mark HAVANA CLUB & Design) which was sent or received by (a) Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, James E. Rogan, (b) Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, Jon W. Dudas, (c) Commissioner for Trademarks, Anne Chasser, and/or (d) any member of the Trademark Trial and Appeal Board."

The United States Patent and Trademark Office has identified five pages of documents that are responsive to your request. A copy of this material is enclosed.

The processing fee has been waived. See 37 C.F.R. § 102.11(d)(4).

Sincerely,

Robert Fawcett
Paralegal Specialist

Enclosure

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

101 PARK AVENUE

NEW YORK, NEW YORK 10178

(212) 806-7800

WASHINGTON, DC

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

FACSIMILE

(212) 806-7807

www.kelleydrye.com

February 27, 2002

WILLIAM R. GOLDEN, JR.

DIRECT LINE (212) 806-7892

E-MAIL: wgolden@kelleydrye.com

VIA FACSIMILE AND EXPRESS MAIL

United States Patent and Trademark Office
Office of the Solicitor
Attention: Ms. Cynthia C. Lynch
P.O. Box 15667
Arlington, VA 22215

Re: Havana Club Holdings, S.A. v. Galleon S.A.
October 26, 2001 Order To Show Cause

Dear Ms. Lynch:

On Friday, February 22nd, following the phone conversation in which I asked for a copy of the certificate of service with respect to the Notice signed on January 25th by Anne H. Chasser, Commissioner for Trademarks, in connection with the above Order To Show Cause, I received a facsimile copy of that Notice from you. Your facsimile transmittal letter indicated that the Notice itself "reflects service of the Notice on you for the Defendants." This is incorrect. While the Notice did have a standard provision stating that "This Notice shall be served," there was no indication that service had, in fact, been made. As I told you, my call earlier that day was prompted by the fact that, to the best of my knowledge, Kelley Drye had not received a service copy of the Notice. In fact, the original Order To Show Cause, which contained the same "shall be served" language, was not served until after the date on which it was originally executed. Because of this problem, Margaret Ferguson and I had discussions with you concerning the manner of service of papers in connection with Order To Show Cause. We were concerned that after September 11th and the ensuing Anthrax scare mail service both in Washington, DC and in New York was subject to delays. We, therefore, reached an agreement that the filing and service of papers in connection with Order To Show Cause would be served by overnight courier service and facsimile. In accordance with that agreement, the Order Granting Joint Application For Extension of Time which also contained the formulaic language directing that "This Order shall

KELLEY DRYE & WARREN LLP

Ms. Cynthia Lynch
February 27, 2002
Page Two

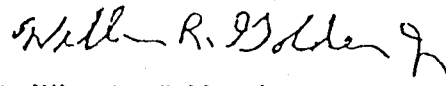
be served" was accompanied by a separate Certificate of Service "by Federal Express, next-day delivery, and by facsimile" that you executed on behalf of the PTO, (copies attached).

Our client first heard murmurings that a decision may have been made on the Show Cause Order on Friday, February 15th. Kelley Drye then tried to ascertain whether this was correct and to obtain a copy of that decision from the PTO. Margaret Ferguson placed a call to you that day and left a message inquiring about the decision. I placed a call to the office of Lynne G. Beresford, Esq. and to her assistant. We also checked with the Trial and Appeal Board to see if an order had been entered. None of these calls were returned and it was not until a week later on Friday the 22nd that Bacardi managed to obtain a copy of the Notice from a third party. This prompted another call to the Solicitor General's Office which led to our conversation.

After receiving your facsimile on Friday, I had a complete search conducted at Kelley Drye's offices over the weekend in order to double check whether the Notice had been served and somehow accidentally misplaced. No trace of a service copy was found. Since we have docketing procedures in place with respect to all papers received from the PTO and other governmental agencies or courts which has always worked in the past, I can only conclude that Kelley Drye was not served. Since you indicated you had no knowledge of the service yourself, I must reiterate my request that you check the PTO files to see whether the Notice was served by someone else at the PTO and whether a certificate of service was executed with respect to the Notice. If so, I would be most appreciative if you would get back to me with this information and forward a copy of the certificate of service for our record.

I am sorry to trouble you with this request but unfortunately the *Havana Club* proceedings in the PTO have been plagued with lost or missing documents that have created untoward delay in this and related proceedings.

Very truly yours,



William R. Golden, Jr.

WRG:kg

cc: Frederick J. Wilson, III, Esq.
Anne H. Chasser, Esq.
Lynne G. Beresford, Esq.

UNITED STATES PATENT AND TRADEMARK OFFICE

HAVANA CLUB HOLDING, S.A.
 HAVANA CLUB, INTERNATIONAL, S.A.

Plaintiffs-Counter-Defendants-Appellants,

vs.

GALLEON, S.A.,
 BACARDI-MARTINI, USA, INC.

Defendants-Appellees.

ORDER GRANTING JOINT
APPLICATION FOR EXTENSION
OF TIME

The parties have jointly applied for an extension of time in which to respond to the United States Patent and Trademark Office's order to show cause dated October 26, 2001. The application is hereby granted, and the parties' deadline for responses is extended up to and including November 13, 2001.


On or before November 26, 2001, the parties may submit replies to any responses received.

This Order shall be served upon:

(1) Plaintiffs, by service upon counsel Charles S. Sims, Esq., Proskauer Rose, LLP, 1585 Broadway, New York, N.Y. 10036, and by service upon Michael Krinsky, Esq., Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., 740 Broadway, New York, N.Y. 10003; and

(2) Defendants, by service upon counsel William R. Golden, Jr., Esq., Kelley Drye & Warren, LLP, 101 Park Avenue, New York, N.Y. 10178.

Dated: 11-8-01



Clarence C. Crawford
Acting on behalf of
Nicholas P. Godici
Acting Under Secretary of Commerce for Intellectual
Property and Acting Director of the United States
Patent and Trademark Office

CERTIFICATE OF SERVICE

I certify that on November 8, 2001, I caused copies of the foregoing Order Granting Joint Application for Extension of Time to be delivered by Federal Express, next-day delivery, addressed as follows, and by facsimile as follows:

Charles S. Sims, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036
fax # (212)969-2900

Michael Krinsky, Esq.
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, PC
740 Broadway
New York, NY 10003
fax # (212)674-4614

✓ William R. Golden, Jr., Esq.
Kelley Drye & Warren, LLP
101 Park Avenue
New York, NY 10178
fax # (212)808-7897

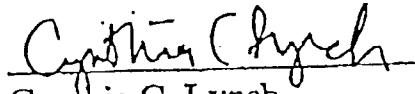

Cynthia C. Lynch
P.O. Box 15667
Arlington, Virginia 22215
(703) 305-9035

Exhibit C



OGC PK 2 #915

United States Patent and Trademark Office
Washington, DC 20231
If Undeliverable Return in Ten Days
Address Correction Requested

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

Gregg Reed
Poskauer Rose LLP
1585 Broadway,
Suite 1864
New York, NY 10036

10036-8233 30

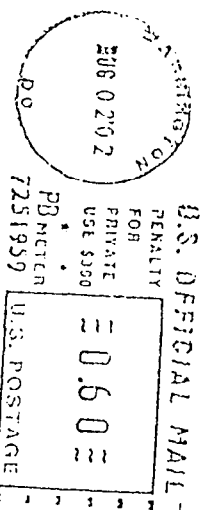
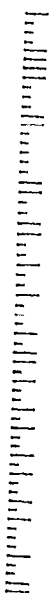


EXHIBIT D



UNITED STATES
PATENT AND
TRADEMARK OFFICE

General Counsel
Washington, DC 20231
www.uspto.gov

AUG 13 2002

Gregg Reed
Poskauer Rose LLP
1585 Broadway,
Suite 1864
New York, NY 10036

Re: Freedom of Information Act (FOIA) Request No. 02-245

Dear Mr. Reed:

This letter supplements the Agency's August 1, 2002, response to the above-referenced request.

The United States Patent and Trademark Office has identified four additional pages of documents that are responsive to your request. A copy of this material is enclosed.

The processing fee has been waived. See 37 C.F.R. § 102.11(d)(4).

Sincerely,

Robert Fawcett
Paralegal Specialist

Enclosure



JEB BUSH
GOVERNOR

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7148
850-487-0801 fax

June 13, 2002

The Honorable James E. Rogan
US Patent and Trademark Office
Crystal Park, Building 2, Room 906
2121 Crystal Drive
Arlington, VA 22202

Dear Under Secretary Rogan:

I am writing on behalf of Florida-based Bacardi-Martini, USA, Inc. to ask that the Patent and Trademark Office take quick, decisive action on a pending application to expunge the registration of the trademark Havana Club. The out-dated registration belongs to a company owned by Fidel Castro called CubaExport and should be cancelled immediately.

Bacardi-Martini, USA, Inc. generates close to \$1 billion of business a year nationally. The company's domestic headquarters are located in Miami and has a workforce of more than 300 Floridians and more than 600 employees throughout the United States.

As I understand, since 1997 Bacardi-Martini, USA, Inc. has sought, through every legal channel, to cancel the Fidel Castro regime's registration of the Havana Club trademark. In 1960, Fidel Castro confiscated the Havana Club brand from the family who owned the company. Castro transferred the brand name to CubaExport, a Cuban government-controlled company in 1976. In 1993, the company Havana Club Holdings, jointly owned by Castro's Cuban government and the French company Pernod-Ricard, applied for and was granted, legal registration of the brand for use in the United States. However, it was not theirs to register. Furthermore, Bacardi-Martini, USA, Inc. purchased the Havana Club brand and assets in 1997 from the original owners.

Though Bacardi-Martini, USA, Inc. has spent a great deal of time and money to cancel the delinquent registration owned by the Castro regime, there has been no relief for the company. Instead, they have been faced with a process mired in lengthy bureaucratic procedures, with no end in sight.



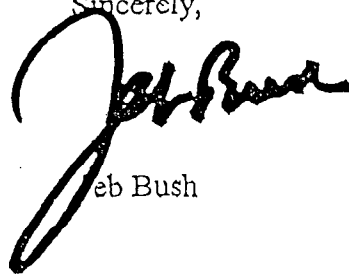
Governor's Mentoring Initiative
BE A MENTOR. BE A BIG HELP.
1-800-825-3786

Exhibit D

The Honorable James E. Rogan
June 13, 2002
Page Two

A swift resolution to this matter is imperative. Should you have further questions, please do not hesitate to contact my office. You may also feel free to contact my Washington, D.C., Office at 202/624-5885. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeb Bush". The signature is stylized with a large, looping initial "J" and a cursive "Bush".

Jeb Bush



UNITED STATES
PATENT AND
TRADEMARK OFFICE

Under Secretary of Commerce For Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, DC 20231
www.uspto.gov

JUL - 3 2002

The Honorable Jeb Bush
Governor of Florida
Tallahassee, Florida 32399-0001

Dear Governor Bush: *Jeb -*

Thank you very much for your letter of June 13, 2002, regarding the trademark "HAVANA CLUB". I am grateful for the opportunity to provide you with specific information regarding the status of the "HAVANA CLUB" trademark registration.

U.S. Trademark Registration No. 1,031,651 ("HAVANA CLUB" and design) is the subject of Cancellation Proceeding No. 92-024108 before the United States Patent and Trademark Office's (USPTO) Trademark Trial and Appeal Board (TTAB).

The cancellation proceeding was initiated in 1995 by Galleon S.A., Bacardi-Martini U.S.A., Inc., and Bacardi & Company Ltd. ("Bacardi") against Havana Club Holding, S.A. and Havana Rum & Liquors, S.A., d/b/a/ H.R.L., S.A. ("HCH"). At the request of the parties, the proceeding was suspended on July 1, 1999, pending the outcome of other civil litigation. The proceeding was revived, again at the request of the parties, earlier this year.

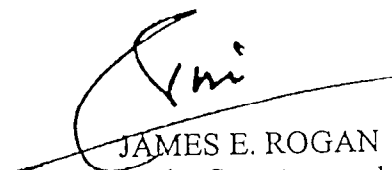
On January 15, 2002, pursuant to an October 20, 1997 Court order from the United States District Court for the Southern District of New York, the USPTO's Commissioner for Trademarks ordered USPTO assignment and registration records rectified to reflect ownership of U.S. Trademark Registration No. 1,031,651 in Cubaexport. The assignment changes were recorded in the USPTO's records at: Reel: 002398 Frames: 0855-0863.

On March 15, 2002, Bacardi filed a petition to substitute Cubaexport as the defendant in the cancellation proceeding and to obtain summary judgment (for cancellation). On March 19, 2002, Bacardi filed with the U.S. Court of Appeals for the Federal Circuit a petition for review of the Commissioner for Trademarks' January 15, 2002 order. *Galleon, S.A. v. Chasser*, No. 02-1289 (Fed. Cir.). On May 13, 2002, the TTAB suspended action on the cancellation proceeding pending the outcome of the relevant litigation (*Galleon, S.A. v. Chasser*, No. 02-1289) in the U.S. Court of Appeals for the Federal Circuit.

I hope this information clarifies the status of the cancellation proceeding involving the "HAVANA CLUB" case. To an important degree, the parties themselves are determining the pace of final resolution with respect to Cancellation Proceeding No. 92-024108. The Office will act expeditiously when the proceeding reaches the stage where the TTAB has statutory and regulatory authority to render a final decision.

Thank you again for this opportunity to provide an update regarding the status of Cancellation Proceeding No. 92-024108. If you should have any questions about this matter, please call me or Jon Dudas, Deputy Under Secretary for Intellectual Property, at (703) 305-8700.

Sincerely,


JAMES E. ROGAN
Under Secretary and Director

*Please pass along my
affectionate regards to two
old friends: Kathleen
Shanahan & Charles Canady!*



EXHIBIT E

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
Telephone 212.969.3000
Fax 212.969.2900

LOS ANGELES
WASHINGTON
BOCA RATON
NEWARK
PARIS

Gregg Reed
Attorney at Law

Direct Dial 212.969.3938
greed@proskauer.com

July 15, 2002

BY FEDERAL EXPRESS & FAX

The Governor's Office
The Capitol Building
Tallahassee, FL 32399-0001

Re: **Public Records Act Request**

To Whom It May Concern:

In accordance with the Public Records Act, Chapter 119 of the Florida Statutes, I hereby request the following documents:

All correspondence concerning any request to cancel U.S. trademark registration No. 1,031,651 (for the mark HAVANA CLUB & Design) which was sent or received by or on behalf of Governor Jeb Bush.

If you refuse to provide this information, Chapter 119 requires you to advise me in writing and indicate the applicable exemption to the Public Records Act. Also, please state with particularity the reasons for your decision, as required by Section 119.07(2)(a). If the exemption you are claiming only applies to a portion of the records requested, please delete that portion and provide photocopies of the remainder of the records, according to Section 119.07(2)(a).

If you have any questions or need more information in order to expedite this request, please call me.

Thank you.

Sincerely,



Gregg Reed

EXHIBIT F



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7148
850-487-0801 fax

Total Pages

4

FAX COVER SHEET

Date: 8/28/02

To: Greg Reid

Phone: _____

Fax: 212-969-2900

From: Office of the General Counsel Room 209, The Capitol
(850) 488-3494 Phone (850) 488-9810 Fax
(850) 922-0309 Fax

<input type="checkbox"/>	Charles T. Canady, General Counsel	<input type="checkbox"/>	Carlos Muniz, Deputy General Counsel
<input type="checkbox"/>	Leslie Jacobs, Executive Assistant	<input type="checkbox"/>	Simone Marstiller, Asst. General Counsel
<input type="checkbox"/>		<input type="checkbox"/>	Susan Rehwinkel, Executive Assistant
<input checked="" type="checkbox"/>	Jean Hartman, Asst. General Counsel	<input type="checkbox"/>	
<input type="checkbox"/>	Kevin Tang, Asst. General Counsel	<input type="checkbox"/>	Wendy Berger, Asst. General Counsel
<input type="checkbox"/>	Janis Maloney, Administrative Assistant	<input type="checkbox"/>	Greg Munson, Asst. General Counsel
<input type="checkbox"/>		<input type="checkbox"/>	Nancy Downing, Administrative Assistant
<input type="checkbox"/>	Keisha Muirhead, Administrative Assistant-Receptionist	<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	
<input type="checkbox"/>	Tena Pate, Victims' Rights Coordinator	<input type="checkbox"/>	Susan Smith, Extradition Coordinator
<input type="checkbox"/>		<input type="checkbox"/>	

Comments: _____

Please call our office immediately if there is a problem with the transmission.

Exhibit F

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Governor's Mentoring Initiative

BE A MENTOR. BE A BIG HELP.

P.01 850 488 9810

EXECUTIVE OFC OF GOVERNOR

AUG-28-2002 11:26



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

June 13, 2002

The Honorable James E. Rogan
US Patent and Trademark Office
Crystal Park, Building 2, Room 906
2121 Crystal Drive
Arlington, VA 22202

Dear Under Secretary Rogan:

I am writing on behalf of Florida-based Bacardi-Martini, USA, Inc. to ask that the Patent and Trademark Office take quick, decisive action on a pending application to expunge the registration of the trademark Havana Club. The out-dated registration belongs to a company owned by Fidel Castro called CubaExport and should be cancelled immediately.

Bacardi-Martini, USA, Inc. generates close to \$1 billion of business a year nationally. The company's domestic headquarters are located in Miami and has a workforce of more than 300 Floridians and more than 600 employees throughout the United States.

As I understand, since 1997 Bacardi-Martini, USA, Inc. has sought, through every legal channel, to cancel the Fidel Castro regime's registration of the Havana Club trademark. In 1960, Fidel Castro confiscated the Havana Club brand from the family who owned the company. Castro transferred the brand name to CubaExport, a Cuban government-controlled company in 1976. In 1993, the company Havana Club Holdings, jointly owned by Castro's Cuban government and the French company Pernod-Ricard, applied for and was granted, legal registration of the brand for use in the United States. However, it was not theirs to register. Furthermore, Bacardi-Martini, USA, Inc. purchased the Havana Club brand and assets in 1997 from the original owners.

Though Bacardi-Martini, USA, Inc. has spent a great deal of time and money to cancel the delinquent registration owned by the Castro regime, there has been no relief for the company. Instead, they have been faced with a process mired in lengthy bureaucratic procedures, with no end in sight.

Exhibit F



Governor's Mentoring Initiative

EXECUTIVE OFFICE OF GOVERNOR

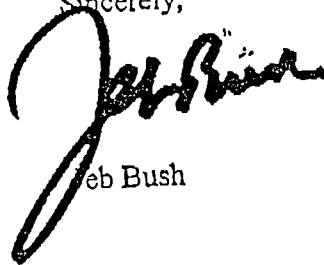
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AUG-28-2002 11:27

The Honorable James E. Rogan
June 13, 2002
Page Two

A swift resolution to this matter is imperative. Should you have further questions, please do not hesitate to contact my office. You may also feel free to contact my Washington, D.C., Office at 202/624-5885. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeb Bush". The signature is stylized with a large, looping initial "J" and a trailing flourish.

Jeb Bush

Exhibit F



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

July 16, 2002

The Honorable James E. Rogan
Undersecretary and Director
U.S. Patent and Trademark Office
Crystal Park, Building 2, Room 906
2121 Crystal Drive
Arlington, VA 22202

Dear Mr. Rogan:

Thank you for the information you passed along regarding the Bacardi case. Your candor on the issue is appreciated. Along with the continued assistance of Mr. Jon Dudas, your attention to this matter has been very helpful. Please do not hesitate to call upon me, if I can be of service to you in the future.

Sincerely,

A handwritten signature of Jeb Bush in black ink, written over the word "Sincerely,".

Jeb Bush

Exhibit F



Governor's Mentoring Initiative

EXECUTIVE OFC OF GOVERNOR

Exhibits

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
GALLEON S.A.,	:
BACARDI-MARTINI U.S.A., INC. and	:
BACARDI & COMPANY LIMITED,	:
	:
<i>Petitioners,</i>	:
	:
- against -	:
	:
HAVANA CLUB HOLDINGS, S.A. and	:
HAVANA RUM & LIQUORS, S.A.	:
d.b.a. H.R.L., S.A.,	:
	:
<i>Respondents</i>	:
	:
-----X	

Cancellation No. 24,108

**MOTION PURSUANT TO THE GOVERNMENT IN THE SUNSHINE ACT FOR
(A) AN ORDER REQUIRING PETITIONERS TO SHOW CAUSE WHY THEIR
CLAIMS SHOULD NOT BE DISMISSED DUE TO IMPROPER EX PARTE
CONTACTS CONCERNING AN ADJUDICATORY PROCEEDING,
(B) FULL DISCLOSURE BY PETITIONERS, GOVERNOR BUSH, USPTO DIRECTOR
JAMES E. ROGAN AND DEPUTY DIRECTOR JON DUDAS OF THE EXTENT AND
NATURE OF ALL SUCH EX PARTE COMMUNICATIONS RELATED TO THIS
PROCEEDING, AND (C) SUSPENSION OF THIS PROCEEDING PENDING
RESOLUTION OF THE FOREGOING**

Respondents have obtained records of improper *ex parte* communications that petitioners (hereafter "Bacardi"), through Florida Governor Jeb Bush, have made to senior members of the Patent and Trademark Office and the Trademark Trial and Appeal Board. Only days after Bacardi delivered a \$50,000 contribution to the Florida Republican Party earlier this summer, Governor Bush sent a letter to James E. Rogan, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, expressly written "on behalf of" Petitioner Bacardi-Martini U.S.A., Inc., asking Director Rogan to have the Board rule

in Bacardi's favor. Governor Bush complained of "lengthy bureaucratic procedures," declared that "[a] swift resolution to this matter is imperative," called on Director Rogan to "take quick, decisive action on a pending application to expunge the registration of the trademark Havana Club," and called for the immediate cancellation of the HAVANA CLUB registration.

Respondents also have obtained a copy of a further letter written by Governor Bush to Director Rogan "regarding the Bacardi case," dated July 16, 2002, in which Governor Bush thanked Director Rogan for his attention to this matter" and expressed his appreciation for the "continued assistance of Mr. Jon Dudas," Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the U.S. Patent and Trademark Office, on Bacardi's behalf. Curiously, the Patent and Trademark Office did not disclose this letter pursuant to the Freedom of Information Act request submitted by respondents' counsel.

Bacardi's *ex parte* communications concerning the pending cancellation proceeding through Governor Bush (and/or others presently unknown) with Director Rogan and Deputy Director Dudas violate the Government in the Sunshine Act, 5 U.S.C. §557(d)(1), the rules governing this proceeding, 37 CFR 10.93(b), and prevailing norms of justice, due process, and fair play. The violations here, comprising at least the making of the communications and the failure of Director Rogan and Deputy Director Dudas to have disclosed them fully, as they were required to do by law, appear particularly egregious given the content of the communications (calling for a disposition in Bacardi's favor), the identity of the parties to those communications (Governor Bush's brother is the President of the United States, who appointed Director Rogan, a former Republican Congressman, to his current position), the extremely close temporal connection between Bacardi's \$50,000 contribution and Governor Bush's extraordinary letter, and the absence of any legitimate purpose for Governor Bush's undertaking on behalf of Bacardi.

The *ex parte* communications in hand, and the others whose existence they refer to, raise substantial and grave concern concerning the fairness and impartiality of this proceeding, and the possibility of obtaining a fair hearing. The Government in the Sunshine Act requires an inquiry into the extent and nature of contacts made, and determination of what remedies, up to and including dismissal, are appropriate in their light. Respondents move, pursuant to 5 U.S.C. §557(d), 37 CFR 10.93(b), and the rules governing this proceeding, for an order (a) directing Bacardi to show cause why its cancellation proceeding should not be dismissed, and (b) directing full disclosure by Bacardi, Governor Bush, Director Rogan, and Deputy Director Dudas, of all *ex parte* communications between Bacardi and its agents and the PTO in this proceeding, and all communications and actions related thereto. In addition, because this motion calls into question the validity and legitimacy of this proceeding, including by raising material concerns as to the impartiality of the relevant decision makers, it must be addressed prior to any and all other matters in this proceeding, and on that basis respondents move for an order suspending the proceeding in all respects pending resolution of the foregoing.

In support of this motion, respondents allege as follows:

Relevant Facts

1. Between June 2, 1998 and May 29, 2002, Petitioner Bacardi-Martini U.S.A., Inc. contributed at least \$210,000 to the Republican Party of Florida. See accompanying declaration of Respondents' counsel Gregg Reed ("Reed Decl."), at ¶2 and Exh. A. Included within that total is a \$50,000 contribution made by Bacardi-Martini U.S.A., Inc. to the Florida Republican Party on May 29, 2002. *Id.* Additionally, four senior managers of Bacardi-Martini U.S.A. and their wives have each given the maximum legal contribution to the 2002 Bush campaign, with the two most senior managers and their wives contributing a total of \$2,000 at the same

December 2001 fundraiser. Two other senior managers and their wives attended subsequent fundraising events in February and March 2002 where each again made the largest contribution allowed by law.

2. On June 13, 2002 — just 10 business days following Petitioner Bacardi's \$50,000 contribution to the Florida Republican Party — Florida Governor Bush wrote a letter to Director Rogan asking Mr. Rogan to see to it that Petitioners prevail in this proceeding. *See Reed Decl. Exh. C* (including copy of Governor Bush's June 13, 2002 letter).¹ Extraordinarily, Governor Bush advised that he was writing "on behalf of Florida-based Bacardi-Martini USA, Inc.":

I am writing on behalf of Florida-based Bacardi-Martini, USA, Inc. to ask that the Patent and Trademark Office take quick, decisive action on a pending application to expunge the registration of the trademark Havana Club. The out-dated registration belongs to a company owned by Fidel Castro called CubaExport and should be cancelled [sic] immediately.

Id. (emphases added).

3. Governor Bush's June 13 letter was not copied to respondents or their agents or attorneys. The failure contemporaneously to provide the June 13 letter, written "on behalf of" Bacardi, to respondents, was a violation of 5 U.S.C. §557(d)(1)(A), which provides that "no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an *ex parte*

¹ Respondents' counsel obtained the June 13, 2002 letter by virtue of a request filed with the U.S. Patent and Trademark Office under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552. *See Reed Decl. ¶¶3-4 and Exh. B* (copy of FOIA Request).

communication relevant to the merits of the proceeding."² Pursuant to 15 U.S.C. §1067(b), Director Rogan is a member of the Trademark Trial and Appeal Board.

4. Director Rogan did not disclose the June 13 letter to respondents. His failure to do so appears to violate 5 U.S.C. §557(d)(1)(C), which provides in relevant part that

a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or causes to be made, a communication prohibited by this subsection, shall place on the public record of the proceeding (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph

5. Respondents filed requests pursuant to the federal Freedom of Information Act and the Florida Public Records Act, seeking any communications relevant to this matter. *See* Reed Decl. ¶¶ 3, 6 and Exhs. B, E. The July 13 letter was disclosed to both requests.

6. At least the federal FOIA response of the USPTO, however, was materially deficient. Pursuant to the Florida request, respondent subsequently learned that on July 16, 2002, Governor Jeb Bush had written another letter to Director Rogan concerning this proceeding. *See* Reed Decl. Exh. F (including copy of Governor Bush's July 16, 2002 letter).³

² The Government in the Sunshine Act's prohibition against *ex parte* communications is embodied in the rules governing all proceedings before the Board. *See* Trademark Trial and Appeal Board Manual of Procedure §105, 37 C.F.R. 10.93(b) ("In an adversary proceeding, including any inter partes proceeding before the Office, a practitioner shall not communicate or cause another to communicate, as to the merits of the cause with a judge, official, or Office employee before whom the proceeding is pending, except: (1) In the course of official proceedings in the cause [and] (2) In writing if the practitioner promptly delivers a copy of the writing to opposing counsel").

³ Respondents' counsel obtained the July 16, 2002 letter by virtue of a request filed
(continued...)

7. In his July 16 letter, Governor Bush thanked Director Rogan for “your attention to this matter,” and also expressed his appreciation for the “continued assistance of Mr. Jon Dudas,” which he characterized as “very helpful.” Mr. Dudas is the Deputy Director of the PTO.

8. Neither the federal nor the Florida responses to information requests disclosed the extent and nature of the “continuing assistance” provided, and neither set of responses disclosed any correspondence or record of other communications concerning the “continuing assistance” that Deputy Director Dudas has been providing to Bacardi and/or its agent, Governor Bush.

Bacardi Should Be Directed to Show Cause Why Its Claims Should Not Be Dismissed.

9. The *ex parte* communications made by and/or “on behalf of” Bacardi to Director Rogan and Deputy Director Dudas — which the evidence indicates were made promptly after Bacardi's delivery of the latest and largest installment of Bacardi's enormous financial contribution to the Florida Republican Party — constitute per se violations of 5 U.S.C. §557(d)(1)(A).

10. Director Rogan's failure to provide respondents with copies of the June 13 and July 16 *ex parte* letters constituted per se violations of §557(d)(1)(C).

11. Respondents have also not been provided with all other and further *ex parte* communications by Bacardi or on its behalf, including all written communications and/or memoranda stating the substance of all oral communications that the July 16 letter indicates have taken place between Deputy Director Dudas and Bacardi and those acting on its behalf, in violation of §557(d)(1)(C).

³(...continued)

with the Office of the Governor for the State of Florida under Florida's Public Records Act, Chapter 119 of the Florida Statutes. See Reed Decl. ¶ 6 and Exh. E (copy of the Florida information request).

12. The “continuing assistance” and the further *ex parte* communications evidently made by Deputy Director Dudas in response to Bacardi's *ex parte* communications, and other and further communications that on information and belief have been made by Director Rogan, Deputy Director Dudas, or their agents and employees concerning this matter to Bacardi and/or those acting on its behalf, constitute per se violations of §557(d)(1)(B).

13. The Government in the Sunshine Act expressly provides for procedures, remedies and curative relief. 5 U.S.C. §557(d)(1)(D) provides that

upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

Section 556(d) provides that

The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

Pursuant to the Government in the Sunshine Act, 37 CFR 10.93(b), and the rules of this proceeding, and consistent with the interests of justice and the policy of the Government in the Sunshine Act, Bacardi should be directed to show cause why its claim should not be dismissed on account of the *ex parte* communications and such other violations of the Government in the Sunshine Act as have occurred.

Further Disclosure by All Relevant Parties Should Be Ordered

14. The *ex parte* letters sent by Governor Bush “on behalf of” Bacardi to Director Rogan, and the further *ex parte* communications between Bacardi (or those acting on its behalf) and Deputy Director Dudas, themselves entitle Respondents to the relief requested above. However, respondents do not yet know the full extent and nature of the *ex parte* communications that have occurred relevant to this proceeding.

15. Reported decisions enforcing the relevant provisions of the Government in the Sunshine Act reflect that one important purpose of the Act is to afford full disclosure of the extent and nature of all *ex parte* communications, consistent with the underlying disclosure requirements of §557(d)(1)(C). Only with that information in hand can the appropriate assessments and corrective steps be formulated. Without such information, it is impossible to assess whether Bacardi's conduct has so tainted this proceeding that respondents (or their predecessor- or successor-in-interest) cannot obtain, and reasonably be seen to have obtained, a fair, impartial adjudication of their interests.⁴

⁴ Among many decisions indicating the use of § 557(d) to afford disclosure of *ex parte* communications, see, e.g., *Portland Audubon Society v. Endangered Species Committee*, 984 F.2d 1534, 1549-50 (9th Cir. 1993) (evidence of White House *ex parte* communication with Committee members caused Court to order remand for a “vigorous and thorough” adversarial, evidentiary hearing of the sort described in [PATC v. FLRA, 672 F.2d 109, at 113] “to determine the nature, content, extent, source, and effect of any *ex parte* communications that may have transpired between any member of the Committee or its staff and the President or any member of his staff regarding the matter at issue;” the Court further held that the ALJ could use any discovery procedures that he may find necessary to determine the merits of petitioners’ allegations concerning the *ex parte* communications); *Professional Air Traffic Controllers Org. v. FLRA*, 672 F.2d 109, 113 (D.C. Cir. 1982) (evidence of *ex parte* communication with FLRA member caused Court to order FLRA to hold an evidentiary hearing, with a specially appointed ALJ from a neutral agency, “to determine the nature, extent, source and effect of any and all *ex parte* communications and other approaches that may have been made to any member or members of the FLRA” while the case in question was pending; the Court noted that the hearing
(continued...)

16. Accordingly, in addition to and in connection with issuance of an order requiring Bacardi to show cause why its claims should not be dismissed, respondents are entitled to, and hereby move for, an order demanding full disclosure by Bacardi (and its agents and attorneys), Director Rogan, Deputy Director Dudas, the USPTO (including the TTAB), and Governor Bush, of all *ex parte* communications thus far made which relate to this proceeding, consistent with §557(d)(1)(C).

17. Respondents ask that the Board impose a discovery schedule specifically devoted to this purpose, following which all communications so disclosed and all "continuing assistance" to Bacardi rendered may be placed on record.

All Other Proceedings Should Be Suspended

18. This cancellation proceeding was suspended pending the outcome of a litigation that has now concluded. Bacardi has moved to resume the proceedings. If that motion were granted, there would be at least three motions before the Board, including (a) respondents' fully-briefed motion for summary judgment, which has been pending since October 1996; (b) Bacardi's

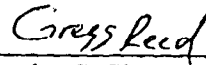
⁴(...continued)

was to be an "adversarial inquiry to produce a vigorous and thorough airing sufficient to disclose whether any improper influence tainted FLRA's decisionmaking process"); *North Carolina Env'tl. Policy Inst. v. EPA*, 881 F.2d 1250, 1258 (4th Cir. 1989) (following accusation that EPA made *ex parte* communication, ALJ was obligated to explore the possibility of and protect against taint of the proceeding and, therefore, required disclosure of all proscribed *ex parte* communications before rendering a decision; the Court noted that the ALJ should give the parties adequate opportunity to review the *ex parte* communications, comment on them, and if appropriate order any further disclosures that may appear warranted, including the conducting of "an evidentiary hearing to determine the nature, extent, source and effect of any and all *ex parte* communications"); and *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 58 (D.C. Cir. 1977) (evidence of *ex parte* communication during FCC rulemaking proceeding caused Court to remand to agency with instructions to hold evidentiary hearing, with aid of a specially appointed hearing examiner, "to determine the nature and source of all *ex parte* pleas and other approaches that were made to the [FCC] or its employees [during the rulemaking proceeding at issue]").

motion to substitute parties and for summary judgment, to which respondents have not yet responded; and (c) respondents' above-motion relating to Bacardi's *ex parte* communications.

19. Respondents request an order making clear that the first two of those motions, together with all other action in this proceeding not related to Bacardi's *ex parte* communications, will be suspended pending issuance and determination of the order to show cause, and completion of discovery, requested in Point I above. The issues before the Board can only be resolved in this order, inasmuch as the issues raised by this motion run directly to the validity and legitimacy of this proceeding, including by raising material concerns as to the neutrality of the relevant decision makers. This motion therefore must be dealt with and resolved prior to resolution of any and all other issues in this proceeding.⁵

Respectfully submitted,



Charles S. Sims
Gregg Reed
PROSKAUER ROSE LLP
1585 Broadway
New York, New York 10036
(212) 969-3000
Attorneys for Respondents

Dated: September 10, 2002

⁵ Trademark Board Rule 510 authorizes the suspension of proceedings for good cause, and the Board has suspended proceedings for far less cause than the strong cause shown here. *See, e.g., D.K. Jain D/B/A Luxor Pen Co. v. Ramparts, Inc.*, 49 U.S.P.Q.2d 1429 (1998) (TTAB suspended proceedings pending disposition of motions to compel discovery and to reset trial dates); *SDT, Inc. v. Patterson Dental Co.*, 30 U.S.P.Q.2d 1707 (1994) (TTAB *sua sponte* suspended proceedings due to filing of a motion for leave to amend notice of opposition because it would be "unreasonable to expect either party to take discovery or offer evidence prior to the determination of the motion"); *Midwest Plastic Fabricators Inc. v. Underwriters Labs. Inc.*, 5 U.S.P.Q.2d 1067, 1069 (1987) (TTAB *sua sponte* suspended proceedings pending decision on petitioner's motion for Request for Disclosure Order regarding certain alleged confidential information held by respondent).

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on September 10, 2002, a true and correct copy of the foregoing

MOTION PURSUANT TO THE GOVERNMENT IN THE
SUNSHINE ACT FOR (A) AN ORDER REQUIRING
PETITIONERS TO SHOW CAUSE WHY THEIR CLAIMS
SHOULD NOT BE DISMISSED DUE TO IMPROPER EX
PARTE CONTACTS CONCERNING AN ADJUDICATORY
PROCEEDING, (B) FULL DISCLOSURE BY PETITIONERS,
GOVERNOR BUSH, USPTO DIRECTOR JAMES E. ROGAN
AND DEPUTY DIRECTOR JON DUDAS OF THE EXTENT
AND NATURE OF ALL SUCH EX PARTE
COMMUNICATIONS RELATED TO THIS PROCEEDING,
AND (C) SUSPENSION OF THIS PROCEEDING PENDING
RESOLUTION OF THE FOREGOING

was served by hand on:

William R. Golden, Jr.
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101 Park Avenue
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September 10, 2002

BY HAND

Trademark Trial and Appeal Board
2900 Crystal Drive
Ninth Floor
Arlington, VA 22202

Re: Galleon S.A. (Bacardi) v. Havana Club Holdings, S.A.; TTAB Cancellation No. 24,108

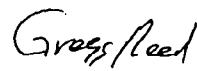
To Whom It May Concern:

On behalf of Respondents Havana Club Holdings, S.A. and Havana Rum & Liquors, S.A. in the above-referenced cancellation proceeding, enclosed for filing please find the following:

1. Motion Pursuant to the Government in the Sunshine Act for (A) an Order Requiring Petitioners to Show Cause Why Their Claims Should Not Be Dismissed Due to Improper Ex Parte Contacts Concerning an Adjudicatory Proceeding, (B) Full Disclosure by Petitioners, Governor Bush, USPTO Director James E. Rogan and Deputy Director Jon Dudas of the Extent and Nature of All Such Ex Parte Communications Related to this Proceeding, and (C) Suspension of this Proceeding Pending Resolution of the Foregoing; and
2. Supporting Declaration of Gregg Reed.

The enclosed motion, *inter alia*, seeks a stay of the proceeding pending resolution of the motion pursuant to the Government in the Sunshine Act and, as such, additionally serves to respond to Petitioners' pending motion to resume the proceedings.

Respectfully submitted,


Gregg Reed

Encs.

cc: William R. Golden Jr., Esq. (Counsel for Petitioners)

TTAB
02 SEP 10 PM 11:09
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TRADemark TRIAL AND
APPEAL BOARD